

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL AND HEALTH SERVICES

BOARD OF APPEALS

In Re:) Docket No. 03-2002-H-0505
)
) **REVIEW DECISION AND FINAL ORDER**
)
)
) Home and Community Services
)
Appellants) Client ID No. *****

I. NATURE OF ACTION

1. Administrative Law Judge Andrea Conklin held a hearing and mailed an Initial Decision on September 5, 2002. The Initial Decision determined that ***** was not entitled to a spousal allowance because ***** had failed to provide to the Department with sufficient documentation to determine either ***** monthly income amount or the source of ***** income.

2. The Appellant filed a petition for review of the Initial Decision on September 26, 2002. The Appellant's petition for review stated:

REASONS FOR PETITION FOR A REVIEW OF THIS DECISION

During the course of these proceedings, I have made every attempt to co-operate with the court and DHSC. I have also been subjected to a fraud investigator's interrogation. In general I have been treated with courtesy and openness. HOWEVER, I do believe that I am entitled to spousal allowance as the law provides for it. I have no means of support other than my *****'s social security and the revenues from personal items that I have sold, borrowed against and even pawned to keep going under adverse circumstances. I therefore petition for a review of the decision. Following are the specific reasons for the petition.

An unreasonable burden of proof

Judge Conklin's decision is based on the absence of supporting documentation re deposit sources. I believe I have provided every possible accounting for income for January – April 2002 – all of which has been derived from sales of personal items – barring only the Wells Fargo Bank's failure to find several deposits.

As all parties involved in these proceedings are aware, the bank has been unwilling/unable to provide documentation of any sort from the very start of these

hearings.

Over three months, I made concerted and documented efforts to get deposit information from the bank. As a final resort, I asked Judge Conklin to supply me with a subpoena demanding the records. The subpoena was duly served on the ***** WA main branch.

Twenty-four hours before the subpoena deadline, a Wells Fargo legal officer rang both myself and also DHCS Hearings Co-ordinator Ms. Cathy Arend. The Wells Fargo officer stated that the subpoena was misconstrued from a legal standpoint, and therefore was not enforceable, and that I would have to go back to Judge Conklin for a better-prepared document. Several times during the conversation, I was also prompted by the legal officer to cancel the subpoena, and to pursue my claim through Wells Fargo Customer Service. I declined to cancel the subpoena. Only minutes after this conversation ended, the bank reversed itself. A paralegal from the same Wells Fargo legal office rang to say that the bank would comply, but asked for a further two-week extension. I agreed.

At the end of the two-week extension, the bank supplied a partial list of deposit information. In its covering letter to the court, it merely said that it could not locate records for certain deposits. In other words, the bank's inept record keeping (for which no explanation was given) left me with no formal bank records of details for several transactions.

I cannot see how I can drive this pursuit of Wells Fargo any further without recourse to legal counsel, which I simply cannot afford. I appear to have been caught between the bank and the court, and have lost a claim which I believe is truly just, because I cannot force one to satisfy the other. I therefore respectfully request a review of the decision.

The judgment appears to be open-ended, while at the same time being based on limited evidence.

In regard to these hearings, I was specifically asked to supply all records from December through April 2002. The blanket decision that I am not allowed a spousal allowance does not take into account any evidence at all for the period from May to the present.

Having been exposed to the cavalier attitude of Wells Fargo, I have kept EXTREMELY detailed records of all transactions for those months. I believe I am most definitely entitled to a spousal allowance, and can show detailed and original supporting documents to this effect to the satisfaction of the Review Board. I therefore respectfully request a review of the decision.

II. FINDINGS OF FACT

The undersigned has reviewed the recorded transcript of the hearing, the documents admitted as exhibits, the Initial Decision, and the Appellant's petition for review and supplemental documents and determines that the Findings of Fact are supported by substantial evidence in the record and are adopted as findings in this decision. WAC 388-02-0600(2);

III. CONCLUSIONS OF LAW

1. The petition for review was timely filed and is otherwise proper. WAC 388-02-0560 through -0585. Jurisdiction exists to review the Initial Decision and to enter the final agency order. WAC 388-02-0530(2), -0535, and -0570.

2. Administrative Law Judges (ALJ) and Review Judges must first apply the DSHS rules adopted in the Washington Administrative Code (WAC). If no DSHS rule applies, the ALJ or Review Judge must decide the issue according to the best legal authority and reasoning available, including federal and Washington State constitutions, statutes, regulations, and court decisions. WAC 388-02-0220.

3. A Review Judge may change an initial decision only if a party shows one of the following: (1) irregularity affecting the fairness of the hearing; (2) findings of fact that are unsupported by substantial evidence in the record; (3) a need for additional consistent findings of fact based upon substantial evidence in the record; (4) an error of law; or (5) a need for clarification in order to implement the decision. WAC 388-02-0600(2).

4. When a client receives medical assistance, they have a responsibility to provide to the Department any information or proof of information necessary to determine eligibility. WAC 388-472-0005. The Department may assist the client in obtaining the required proof, but the ultimate responsibility resides with the client requesting the services or benefit. It is uncontested and unfortunate that ***** has met with difficulty in providing the Department with ***** monthly income amount and any proof of its source. However, this difficulty does not release ***** from ***** burden to supply the required information in order to obtain the requested benefit. The Appellant's petition for review has failed to demonstrate that ***** has provided the information necessary to determine ***** eligibility for a spousal allowance under WAC 388-513-1380, or any legal reason that could excuse ***** from the burden of proving ***** eligibility. Because ***** has failed to provide required documentation regarding the

amount or source of ***** monthly income, the ALJ was correct in concluding that ***** was not entitled to a spousal allowance.

5. The undersigned has considered the Initial Decision, the petition for review, and the entire record or the documents provided by the parties. The initial Conclusions of Law cited and applied the governing law correctly. The reasoning in those conclusions is clear and complete. The Appellant's petition for review does not establish a basis to modify the Conclusions of Law in the Initial Decision and they are adopted as conclusions in this decision. WAC 388-02-0600(2); RCW 34.05.464(8). The procedures and time limits for seeking reconsideration or judicial review of this decision are in the attached statement.

IV. DECISION AND ORDER

1. The Initial Decision is affirmed.
2. The Appellant has failed to provide to the Department with sufficient documentation to determine ***** monthly income amount, or the source of ***** income.
3. The Appellant is not entitled to a spousal allowance.

Mailed on January 2, 2003.

THOMAS L. STURGES
Review Judge/Board of Appeals

Attached: Reconsideration/Judicial Review Information

Copies have been sent to: ***** , Appellants
Cathy Arend, Department Representative, ***** HCS
Evelyn Cantrell, *****
Sue McDonough, *****
Andrea Conklin, ALJ, ***** OAH